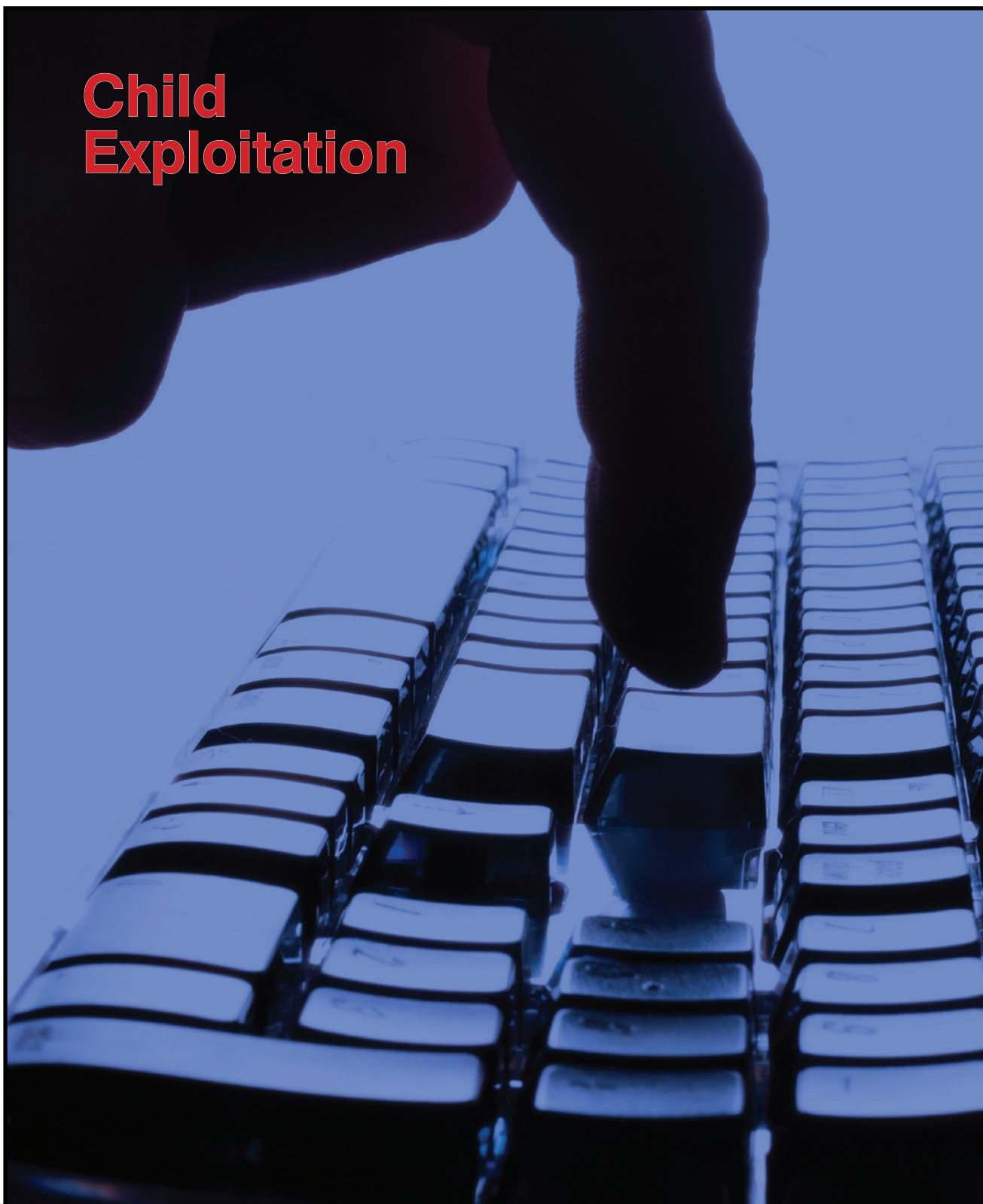




**FBI**  
**Law Enforcement**  
**Bulletin**

June 2009

**Child  
Exploitation**





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Robert S. Mueller III  
Director

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# FBI Law Enforcement Bulletin

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The image shows the silhouettes of two men sitting and talking against a light-colored, textured wall. The man on the right is gesturing with his hand while speaking. The overall tone is professional and contemplative.

# ***It's All About Them***

## ***Tools and Techniques for Interviewing and Human Source Development***

By ROBIN K. DREEKE

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**M**ore and more federal, state, and local law enforcement entities face the challenge of dealing with a growing number of new professionals in their ranks while, at the same time, losing seasoned members at an ever-increasing rate. Because recruiting confidential sources for human intelligence collection constitutes a primary function of the profession and represents

the key to any investigation—whether terrorism, counterintelligence, drug trafficking, gangs, or the myriad of other criminal violations—no professional law enforcement organization can succeed in its pursuit of securing the United States from all threats without this valuable commodity. Although the current professionals entering law enforcement are highly educated, technically savvy,

and extremely intelligent, some have not had the opportunity to develop the human interpersonal skills that time and experience can provide. Compounding the challenge is the increasing workload that inhibits veteran professionals from devoting the necessary time to mentor incoming personnel.

One solution that can help alleviate the difficulty of having less time to mentor involves



breaking down the practice of relationship building into clear, understandable steps and phases. An effective law enforcement professional and leader can take the “art” of relationship building and make it “paint by number.” To illustrate this concept, the author presents a realistic interview and a follow-up explanation involving a veteran law enforcement professional and his less experienced colleague.

## THE INTERVIEW

During his first month on the job, Wilson has worked with the Joint Terrorism Task Force. Smith, one of the veteran agents on the squad, asks him if he wants to meet one of his new sources. Wilson readily agrees, hoping to gain valuable and intangible knowledge from the

experienced agent on how to go about finding and developing confidential human sources. After all, he knows that valuable sources are an effective tool in combating terrorists, spies, and criminals and was a topic dwelt upon extensively at the training academy.

As they travel to the meeting site, a quiet and hidden back booth at a small eatery about 20 to 30 minutes from the office, Wilson asks Smith some questions about how the agent identified this source. Smith gives him a puzzled look and simply states, “I don’t know, you bump into interesting people that you get a hunch about and you start talking.” Amazed at the simplicity of it all, Wilson begins to speculate that source spotting and development may prove easier than he thought.

Once at the restaurant, however, he wonders why they have arrived so early. Smith offers no explanation, and Wilson feels too overwhelmed to ask. Smith selects a table in a quiet back corner, rearranges the chairs, and moves a small floral arrangement to another table. Wilson finally gets up the courage and inquires, “Why did you just do all that?” Smith replies, “I didn’t like the feel of the way things were set up.” Wilson accepts the response, not probing any further about this strange activity.

The source arrives a few minutes later. Smith stands and greets him with a broad smile and a strong handshake and then pulls out a chair for him to sit in. After briefly introducing Wilson, Smith asks the source how his son is feeling. The source responds that he is much better and thanks Smith for asking. Smith next inquires about his spouse’s job search. The source elaborates on this and also mentions that his mother-in-law has fallen ill. During this exchange, the waitress comes to the table to take their lunch orders. Smith immediately suggests something for himself and the source without even glancing at the menu. The source smiles and says, “That sounds great.” Wilson quickly looks at the menu and makes a selection.



*Special Agent Dreeke serves in the FBI's Counterintelligence Division.*

“  
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The dialogue between Smith and the source continues. Finding himself somewhat bored, Wilson looks at the clock and thinks about getting back to the office and typing a report before the end of the day. A few times, Wilson attempts to say something but quickly feels uncomfortable as both Smith and the source stare briefly at him in silence before resuming their conversation.

During the next hour, lunch comes and goes while the source talks about himself and an experience he had at Christmas when he was about 6 years old. Wilson listens in disbelief at what he perceives as a complete waste of time. As the clock ticks into the second hour of this seemingly never-ending conversation, he inadvertently begins to tap his foot as he continues to look at his watch. Wilson, having an extremely hard time understanding the point to this discussion, wonders why Smith does not pose questions relevant to their investigations.

Finally, after more than 2 hours, this apparently useless exchange comes to an end. Smith pays the bill and tells the source that he always enjoys their time together and that his family will be thinking of his mother-in-law during her surgery. Smith makes arrangements to get together again in a few weeks, giving the source

a business card from the venue where they will meet.

After the source departs, Smith sits down and invites Wilson to do the same. Smith questions Wilson regarding his conduct during the meeting and his apparent impatience. In return, Wilson inquires about the long conversation concerning the source's personal life. Smith just gives Wilson a puzzled look while pursing his lips and rubbing the back of his neck before he gets up to leave.

***...Wilson says that he does not understand the point to the meeting with the source and how it could further their investigations.***

#### THE EXPLANATION

Back at the office, Wilson watches Smith sit down and start writing furiously. He asks him what he is doing. Smith says that he is recording the results of the meeting, taking notes on things to cover in the next one, and processing the meal voucher. After he finishes, he asks Wilson to sit down with him to review the conversation.

Smith tells Wilson that he also wants to plan the next encounter with the source based on what they have learned. With a quizical look on his face, Wilson says that he does not understand the point to the meeting with the source and how it could further their investigations. Sitting back in his chair and smiling, Smith apologizes and explains that sometimes he forgets that what has become natural for him over time may not seem as obvious to someone a little newer to their line of work.

Smith asks Wilson what he considers important and notable about the encounter. Wilson says that he understands why they showed up early and why they chose a table in the back corner where it was quiet and more private. He also recognizes the value in asking about the source's son and making arrangements for the next meeting. Smith nods and says that Wilson has made some valid observations but that a great deal more took place in between those events. Wilson's head drops a little, and Smith quickly adds that he should not feel bad because those other elements took Smith quite a lot of time to learn through trial and error and mentoring from a senior agent.

Smith explains that they went to the meeting site early to ensure that they would not be late, to get an appropriate



table in the quiet back corner of the restaurant, and to see that nothing had changed since he had been there a few days earlier. Smith tells Wilson that the questions he asked about the source's son and wife stem from the previous conversation they had together, wherein the source had mentioned them at both the beginning of their meeting and when they parted. So, Smith wanted to assure the source of his concern. This meeting gave him further insight into the source's personal life and the current health issue involving his mother-in-law. Smith informs Wilson that the mother-in-law's health would be the first thing that they ask about at the next meeting with the source and that they also would follow up more on the son and wife.

Wilson says that he understands but still wonders why they spent so much time talking

about the source's personal life. Smith explains that before beginning to ask or task a source for information, agents must "anchor" the relationship for it to withstand some potentially sensitive subjects. To help Wilson understand, Smith asks if he had proposed to his wife on their first or second date. Wilson replies that he had not done that, adding that she did not even like him when they first met. Smith laughs and says, "I'm not surprised." Smith explains that the relationship could not withstand the "storm" of a tough or sensitive question at that time because it had not been "anchored." He tells Wilson that while this particular source has some potentially excellent access to individuals and information that will further their cases, he will not easily share it unless he feels that they have a strong, anchored relationship. Wilson

nods in agreement and says that it took considerable time to anchor his relationship with his wife before he knew he could ask her to marry him without her walking away laughing.

Smith then tells Wilson that he reorganized the table setting and chairs in the restaurant because a majority of communication happens nonverbally and is transmitted throughout the human body. He explains that effective interviewers make sure that they can see a person's entire body, especially the legs and feet because these are some of the best indicators of stress or discomfort. As an example, he advises Wilson that individuals who do not want to be interviewed or answer uncomfortable questions often angle their feet and legs toward an exit. Smith says that he moved the visual obstacles out of the way so that he could gauge how receptive and comfortable the source was during the meeting. Observing the source's entire body will help in the future when Smith eventually asks him more sensitive questions that can help with their investigations. Based on the source's nonverbal baseline that he has acquired over time, Smith will know if he becomes uncomfortable with a question by the way his body responds nonverbally.<sup>1</sup>

Now truly amazed at all that he obviously failed to see and the multitude of reasons

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behind all of the actions that Smith took, Wilson asks what else he missed. Smith describes his holding out the chair for the source to sit in as a subliminal act meant to get the source accustomed to taking direction from him and recognizing that he is in charge and will control their time together. Smith also notes that he did this with a broad, genuine smile to soften a potentially uncomfortable situation and to reduce the somewhat intimidating aspects of his subliminal behavior.<sup>2</sup>

Smith explains that he also ordered the source's favorite meal on purpose, although it posed a slight risk as it was the first time he had done so. Smith tells Wilson that this not only demonstrated to the source that they had similar likes and tastes but also probed how receptive and open the source was to taking some tasking from him. Even though this involved a simple acceptance of a meal choice, Smith had thought it through and planned it in advance as a low-key test of the source's responsiveness.

Next, Smith asks Wilson why he had tapped his foot and looked at his watch during the meeting. Having had this whole new world of understanding thrust upon him, Wilson suddenly realizes that he may have acted inappropriately and apologizes for his impatience. Smith

assures him that he watched the source's nonverbal response to Wilson and it revealed no negative reaction. Wilson breathes a sigh of relief and promises Smith that it will not happen again. Smith knowingly smiles and tells Wilson to remember, out of all of the new information flooding into his brain, the

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**Smith says that he moved the visual obstacles out of the way so that he could gauge how receptive and comfortable the source was....**

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phrase *It's always all about them, not us* because nothing is more important than what the source has to say, especially during the early stages of the relationship-building process. Smith reiterates the point, and Wilson writes the statement on his paper and underlines it.

Encouraged by Wilson's understanding and enthusiasm, Smith asks if he can remember anything else that may have been significant in the conversation that relates to building the relationship. Wilson takes a minute to think while star-

ing at the phrase *It's all about them* and at all of the places he has written the words *relationship building* on his paper. As he recalls the conversation with his newfound awareness, he has an epiphany and exuberantly blurts out, “Christmas!” Smith chuckles, nods, and asks him to explain. Wilson says that as the source spoke about a Christmas when he was 6 years old, his whole face lit up with joy and his eyes got a bit misty. Smith commends Wilson for remembering this event and states that sharing this powerful childhood memory with them formed a strong anchor in their new relationship. Wilson nods, smiles, and thanks Smith for taking the time to explain all of this. Wilson says that he never would have recognized all that happened without Smith describing the many thoughtful actions that go into developing strong relationships and valuable sources.

Smith praises Wilson for being open to so many new concepts and asks if he has any more questions regarding the day's events. After thinking for a moment, Wilson observes that Smith, generally rather quiet and not too gregarious at the office, seemed outgoing and animated around the source. This amazes Smith because Wilson has identified one of the key factors in developing any relationship. He agrees with



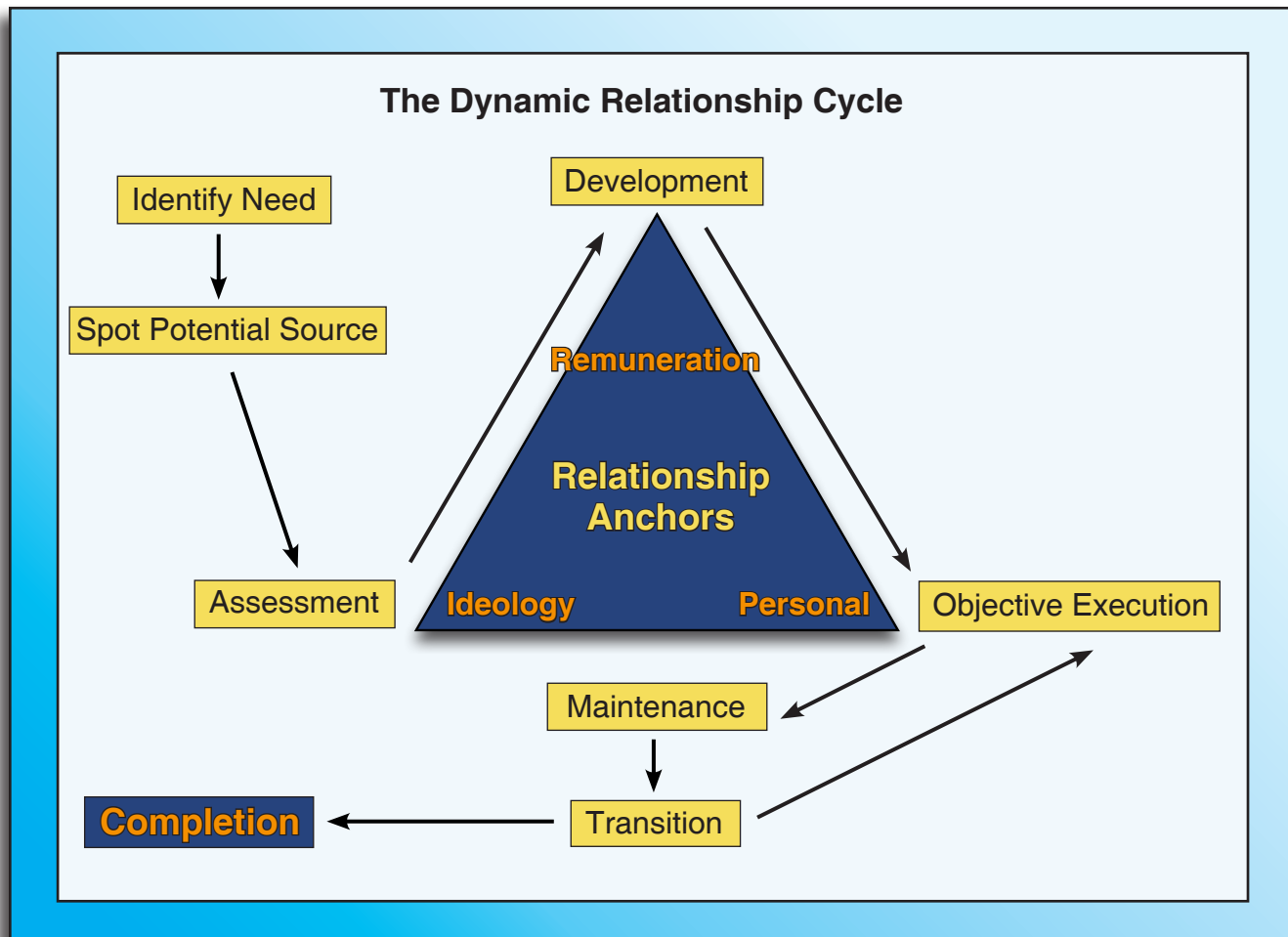
Wilson's assessment and then says that because the source is a more sociable and energetic person, he consciously modifies his behavior to match the source's personality when they are together. Smith explains that people have different personalities and do not want to be treated as someone else would like to be but as *they* want to be treated.<sup>3</sup> Smith takes Wilson's paper and underlines the phrase *It's all about them* again. Wilson

agrees and recognizes the wisdom that Smith has graciously shared with him.

### THE EFFECT

This interview and follow-up explanation demonstrate the challenges associated with developing human sources and the importance of veteran law enforcement professionals mentoring their less experienced colleagues. Smith concentrated on the developmental phase

with a new source, whereas Wilson focused on quickly gleaned valuable human intelligence information for his assigned cases. Both had difficulty understanding what the other was doing. But, because Smith took the time to explain his actions and Wilson remained open to his well-intentioned efforts, an inexperienced agent acquired some valuable lessons from a knowledgeable veteran. Such constructive exchanges



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can have far-reaching effects. Wilson not only gained insight into source development but also saw the importance of mentoring new employees. In years to come, he will look back at this experience with gratitude for Smith's sage advice and for his willingness to share the knowledge he has acquired.

To demonstrate some of the tools and techniques that Smith employed in developing a valuable human source, the author offers an overview of his Dynamic Relationship Cycle that sets forth the seven phases of relationship building and details how to identify the "tri-anchors" that can secure, or "anchor," relationships in a more solid manner.<sup>4</sup> In addition, he provides a simple, effective method of compiling the information obtained about sources that can help law enforcement professionals become better "relationship leaders." After all, whenever an individual takes an active role in directing the course of a relationship and sets the objectives of that relationship, that person becomes the relationship leader.

### **THE DYNAMIC RELATIONSHIP CYCLE**

As an active and thoughtful process to relationship development and leadership, the Dynamic Relationship Cycle requires law enforcement

professionals to outwardly focus on the individual of interest. It offers these professionals a systematic approach to the often challenging but extremely important responsibility of source development and gives them techniques to use in establishing themselves as relationship leaders.

***“...nothing is more important than what the source has to say, especially during the early stages of the relationship-building process.”***

### **Understanding the Phases**

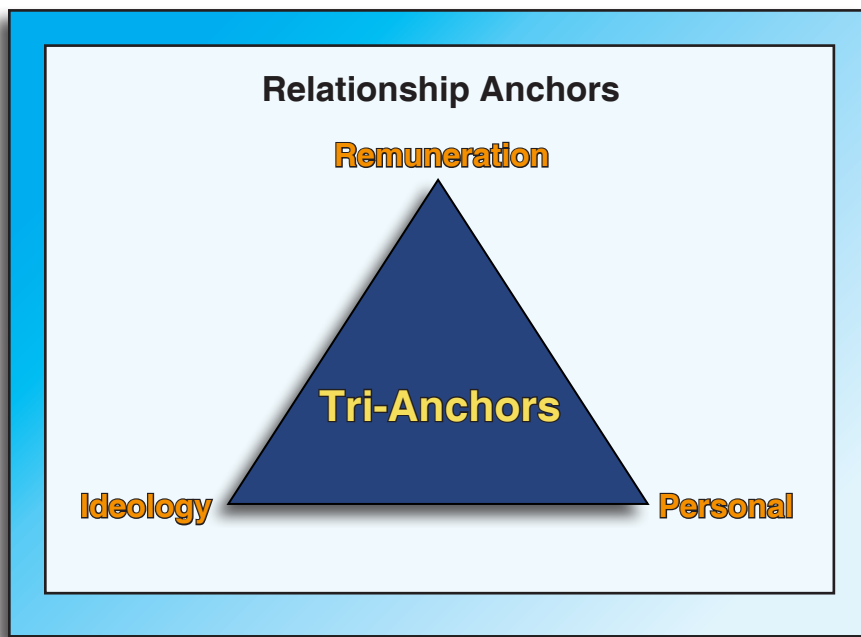
The cycle begins with law enforcement professionals identifying the need for the relationship by recognizing the gap between what they know and what they do not and then creating a biography of the ideal individual to fill that void. The professionals then move into the spotting phase of the cycle where they spot, or discover, an individual who may fit the biography. Next, they assess this person by identifying those key elements, or tri-anchors, that will help set the relationship. The preliminary objective also will be set in this phase.

When the professionals have assessed enough information on the individual, they move into the relationship development phase, typically the most intricate and involved of all of the stages. Then, they finalize the relationship objective, and, by utilizing all of the knowledge they have gleaned during the assessment phase, they solidify the relationship and establish their role as the relationship leader. At this point, the professionals attempt to execute the objective they set in the development phase. Upon completion of the objective, the relationship evolves into the maintenance phase. The law enforcement professionals continue to anchor the relationship, as well as establish another more developed and potentially more sensitive objective.

Finally, the relationship will move into the transition phase where the professionals finalize the new objective and either transition the relationship back to the objective execution phase or move it to conclusion. The cycle continues to flow for the duration of the relationship, and the law enforcement professionals remain outwardly focused, constantly assessing the source and setting new objectives.

### **Identifying the Tri-Anchors**

The underlying foundations and motivations of the Dynamic



Relationship Cycle rest on three core elements of knowledge, or tri-anchors, that law enforcement professionals must gain and understand to fully execute this approach. They include remuneration, ideology, and personal (RIP) anchors that can help uncover an individual's "sense of greatness" and provide the solid base upon which to exercise relationship leadership.<sup>5</sup> As such, they are at the heart of someone's personal motivators. Knowing and understanding a source's tri-anchors can help law enforcement professionals maximize their role as a leader by inducing relationship anchors, which they set prior to the objective execution phase of the Dynamic Relationship Cycle.

Remuneration refers to what a person expects from a

relationship. In one between a law enforcement professional and a confidential source, remuneration can take the form of financial payment, immunity from prosecution, gifts, and many other types of properly authorized compensation. It also can be as simple as someone to listen to the individual's personal issues and problems. In nonprofessional relationships involving friends, family members, or neighbors, people often seek friendship as their remuneration. Most humans have several desires, such as health and the preservation of life, food, sleep, money and the items that money will buy, life in the hereafter, sexual gratification, the well-being of their children, and a feeling of importance, that law enforcement professionals can easily

identify in the remuneration tri-anchor category.<sup>6</sup>

Ideology relates to an individual's particular beliefs and personal priorities that usually pertain to such arenas as religion, politics, work, and family. Whatever topics the person appears passionate about often can be gleaned through value-based statements. For example, people who say that they would do anything for their children or that they never would go against their family are providing significant indicators of their ideology. It is important to remember, however, that value-based statements are made from the individual's context of value.

Personal anchors represent extremely powerful and positive recollections. They can be almost anything but are more easily found in happy memories from childhood, including holidays or family traditions. Knowing an individual's personal anchor intensifiers, such as tastes and smells, also can prove helpful. A powerful emotional anchor about a traditional holiday meal as a child will be accentuated by similar tastes and smells from the memory.

Gaining an understanding of these tri-anchors and relating to the person through rapport-building exercises enable law enforcement professionals to set



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their own relationship anchors during the Dynamic Relationship Cycle. These anchors can prove extremely important, especially if a more difficult objective has been identified for the relationship.

### Compiling the Information

After identifying the tri-anchors, law enforcement professionals can use a leadership notebook to compile all of the information they have obtained in the assessment phase of the Dynamic Relationship Cycle.<sup>7</sup> The notebook becomes a repository for recording the findings of their forays into the relationship-building process.

Using the tri-anchors as an overall framework and then formulating general topics, including personal information, physical characteristics, family history and religion, health, education, current employment and work history, financial (past and present), family dynamics, residence, office, vehicle, appearance, behaviors, interests/hobbies, and personal traits, can help professionals organize the information they have and allow them to see what else they should try to obtain to fulfill the objectives of the relationship. If professionals use the notebook to its full potential, they can remember significant events important to sources and be

well versed on the strengths and weaknesses of these individuals.

### CONCLUSION

In today's high-speed technical world with ever-pressing demands on time, the thoughtful process of relationship development and leadership can sometimes fall by the wayside. The ultimate key to human interaction, both professionally and personally, comes down to interpersonal skills. The attentive process of acquiring the necessary information

***The underlying foundations and motivations of the Dynamic Relationship Cycle rest on three core elements of knowledge....***

about an individual's "desire for greatness" will build the leader's understanding of the person's tri-anchors and help facilitate the Dynamic Relationship Cycle. More important, the law enforcement professional executing the cycle will be much better equipped to develop the human sources necessary to keep this country safe and

secure from all threats, whether foreign or domestic. ♦

### Endnotes

<sup>1</sup> Joe Navarro with Marvin Karlins, *What Every Body Is Saying* (New York, NY: Harper-Collins, 2008).

<sup>2</sup> John R. Schafer and Joe Navarro, *Advanced Interviewing Techniques: Proven Strategies for Law Enforcement, Military, and Security Personnel* (Springfield, IL: Charles C. Thomas, 2003).

<sup>3</sup> Tony Alessandra and Michael J. O'Connor, *The Platinum Rule* (New York, NY: Warner Books, 1996).

<sup>4</sup> The author modified what is recognized as the recruitment cycle into the Dynamic Relationship Cycle based upon his more than 11 years of experience as an FBI special agent in the Counterintelligence Division and as a member of the Counterintelligence Division's Behavioral Analysis Program for 6 of those years. He developed the term *tri-anchors* during that time and has taught this concept in numerous training courses.

<sup>5</sup> Dale Carnegie, *How to Win Friends and Influence People*, rev. ed. (New York, NY: Simon and Schuster, Inc., 1981).

<sup>6</sup> Abraham Maslow, "A Theory of Human Motivation," *Psychological Review* 50 (1943): 370-396; retrieved from <http://psychclassics.yorku.ca/Maslow/motivation.htm>.

<sup>7</sup> The author developed the concept of the leadership notebook based upon his experiences as a captain in the U.S. Marine Corps and a member of the FBI's Counterintelligence Division's Behavioral Analysis Program.

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*The author thanks Dr. Susan Adams, Special Agent David Miller, and Investigative Analyst Kyle Noe for their assistance in preparing this article. He also invites readers interested in discussing or obtaining additional information about this topic to e-mail him at [Robin.Dreeke@ic.fbi.gov](mailto:Robin.Dreeke@ic.fbi.gov).*

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# Leadership Spotlight

## A Legacy of Leadership

**D**uring the past 28 years, I have been assigned to three drug enforcement and three general investigative field offices, countless special projects, and multiagency probes while working in the same agency. During that time, I have served with some of the finest leaders in law enforcement and learned that management styles vary, but the leaders who had the greatest influence on my career possessed relevant common traits. They led with vision, demonstrated commitment, trusted coworkers, and placed the needs of others ahead of their own. They cared about people and practiced the concept of service before self. Admiral Grace Hooper, U.S. Navy retired, said, "You manage things, but you lead people." I agree.

*Leaders are visionaries.* Our best law enforcement visionaries were futurists who accepted the mantle of leadership, then shared their knowledge and experiences with all who would listen. So must we. They understood that navigating the law enforcement profession in the 21st century would fall to us one day and reasoned that knowledge derived from their victories and defeats could prevent us from repeating past mistakes. Did we learn anything? If so, have we applied what we have learned?

*Leaders are committed.* They understood their missions and the need to remain true to their roles. Whether investigating public

corruption, violent crime, or property crime, our mentors taught us the importance of seeking truth and finishing what we started. I once had trouble completing some less significant investigations until a wise supervisor reminded me of the importance of developing a consistent work ethic in everything I did. That lesson paid dividends later as we investigated some heinous offenses together. We do play like we practice.

*Leaders trust others.* In *Ethics 101*, author and

speaker John Maxwell explains how effective leaders teach the art of sound decision making and then allow their subordinates to make decisions. Maxwell says supervisors who micromanage employees by making all decisions for them are wrong 97 percent of the time, but, when leaders empower employees to do so, the decisions are poor only 3 percent of the time. I like those odds.

Effective mentors taught us that whether confronted with an investigative dilemma or a personal issue, decisions should be based on the best information available at the time and filtered through our core values, rather than through the emotions usually associated with our most recent predicament. Great leaders taught us to use an appropriate and ethical decision-making process and then demonstrated trust by allowing us to follow our hunches. We did it ourselves, or so we thought, but we learned.

# SERVICE

At some point in our careers, mentors began fading away through resignations and retirements. Some even made the supreme sacrifice. But have they really faded away? I think not. They continue to influence our profession because *we* are their contribution—their personal investment—the product of their years of experience. Our mentors remain the framers of our future. Committed leaders taught us everything they knew with the belief that we could be better than them. They wanted to leave this profession better than they found it. That is how you build a legacy.

So, who leads now? The legacy of leadership has passed to us. We have been given a great opportunity that comes with great responsibility. We need not create the

legacy—that has been done by the courageous men and women who preceded us. Instead, it is our awesome duty to protect and build upon it wisely.

Take a few moments to inventory your own personal characteristics to continue the legacy of leadership in law enforcement. No matter your current position, you influence others. Do you think you are a positive influence? I hope so. Remember, each of us has an obligation to reach out and share what we have learned, in both successes and setbacks, because, one day, we also will entrust the welfare of our agency to those who follow us. ♦

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*Inspector Fred E. Stephens, Georgia Bureau of Investigation, prepared this Leadership Spotlight.*

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### Wanted: Photographs

**T**he *FBI Law Enforcement Bulletin* staff always is looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use color prints, digital photographs, and slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to: Art Director, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.



## Bulletin Reports

### *Officers Returning from Combat*

*Combat Deployment and the Returning Police Officer*, an Office of Community Oriented Policing Services report, examines issues concerning the transition of law enforcement officers back to work after combat zone deployment. It covers such topics as the psychological effects of combat deployment; methods that may lessen the severity of stress associated with combat; and strategies to help law enforcement officers returning to work, their families, and communities. The document highlights four law enforcement agencies that have taken measures to assist returning officers and offers recommendations for further study. The complete report (NCJ 224254) may be accessed via the National Criminal Justice Reference Service's Web site at <http://www.ncjrs.org>.

### *Gang Survey*

*Highlights of the 2006 National Youth Gang Survey* is an Office of Juvenile Justice and Delinquency Prevention (OJJDP) Fact Sheet that reports findings from the research. Since 1995, the National Youth Gang Center (NYGC) has conducted this annual survey of law enforcement agencies across the United States regarding the presence and characteristics of local gang problems. Selected in 2002, the current nationally representative sample includes all police organizations that serve cities with populations of 50,000 or more and all suburban county police and sheriff's departments, along with a randomly selected sample of police agencies in smaller cities (between 2,500 and 49,999 population) and rural county police and sheriff's departments. For the 2006 survey, 86 percent (2,199) of the 2,551 survey recipients responded. NYGC asked participants to report information solely for youth gangs, defined as "a group of youths or young adults in your jurisdiction that you or other responsible persons in your agency or community are willing to identify as a 'gang.'"

Survey results indicated that approximately 785,000 gang members and 26,500 gangs were active in this country in 2006. The survey asked respondents to indicate factors influencing gang-related violence. Over half of the agencies reported conflict between gangs and drug-related issues as directly affecting levels of gang-related violence. Respondents advised gang-member migration across U.S. jurisdiction, emergence of new gangs, and the return of gang members from secure confinement as somewhat impacting this type of violence and conflict within a gang and gang-member migration from outside the country as infrequently influencing such criminal behavior. The OJJDP Fact Sheet (FS 200805) is available at the National Criminal Justice Reference Service's Web site at <http://www.ncjrs.org>.

## *Policing in Arab-American Communities*

The National Institute of Justice (NIJ) report *Policing in Arab-American Communities After September 11* discusses a study by the Vera Institute of Justice that examined how the terrorist attacks of September 11, 2001, affected relationships between law enforcement officers and residents in Arab-American neighborhoods. Four significant obstacles to improved relations between police and Arab-American communities emerged: mutual distrust between Arab-American communities and law enforcement, lack of cultural awareness among law enforcement officers, language barriers, and residents' concerns about immigration status. Some communities indicated that they feared law enforcement agencies, especially federal ones, more than acts of hate or violence, despite an increase in hate crimes. They specifically cited immigration enforcement, surveillance, and racial profiling.

The study also revealed some promising methods for addressing these obstacles. Many of the best practices proved consistent with general principles of community policing. For more information, access the report directly via NIJ's Web site at <http://www.ojp.usdoj.gov/nij/pubs-sum/221706.htm>.

## *Cybercrime Against Businesses, 2005*

The Bureau of Justice Statistics has released a special report that provides data on monetary loss and system downtime resulting from cyber incidents. *Cybercrime Against Businesses, 2005* presents the nature and prevalence of computer security incidents among 7,818 businesses for that year. It examines details on types of offenders, reporting of incidents to law enforcement, reasons for not reporting such activities, types of systems affected, and the most common security vulnerabilities. The study also compares in-house security with outsourced security in terms of the prevalence of cyber attacks. Appendix tables include industry-level findings. A few highlights revealed that computer virus infections were the most prevalent cybercrime among businesses in 2005; the 3,247 businesses that incurred monetary loss from cybercrime lost a total of \$867 million; and most businesses did not report cyber attacks to law enforcement authorities. Complete information on this publication (NCJ 221943) can be found at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.org>.



# ***Be an Effective Leader***

By DONALD PATTERSON, Ph.D.



**A**s in any organization, leaders of law enforcement agencies want to see results. At the core of their success is the ability to motivate employees to act. While some people may think of such influence in terms of strength, force, dominance, and control, it also can be subtle. Of course, any leader can use their official position within a department or group to get action from personnel. However, the most successful ones use their personal qualities to motivate their staff.

## **POSITIONAL AUTHORITY**

Positional influence comes from a leader's assignment within an agency. It does not extend upward or horizontally, only downward, and includes formal authority and the ability to reward and discipline.

Formal authority, or legitimate power, grows in scope and magnitude as someone's rank increases. It is based on the organization's rules and policies, which usually describe responsibilities or authorization to make decisions in terms of an individual's position. For example, lieutenants may approve crime prevention programs, deployment strategies, and schedule rotations, as well as give orders to lower-ranking officers.

Examples of rewarding others for performance and behavior can include granting merit



raises, promotions, assignments, vacations, awards, and flexible schedules. The rank of leaders and, often, the specific assignment, help determine the type of reward power they possess. For instance, the sergeant of a patrol shift may approve vacations or choice assignments, and the captain in charge of the motor pool may determine who gets new units first.

Disciplining employees for ineffectiveness or rule violations includes, perhaps, transfers, demotions, or suspensions. The amount and type of disciplinary authority also depends on a leader's assignment and rank. For example, a sergeant may have authorization to counsel an employee but not to issue a letter of discipline. A lieutenant may be able to approve a letter of discipline but not to order days off as punishment.

Leaders who rely on their formal power as a control mechanism can lessen the chance of their employees' success.<sup>1</sup> Some such individuals use demands and threats to achieve outcomes, striving not to understand the process of how their staff members achieve final results but only to issue commands and have them carried out without question or comment. Often, they view the organization as a machine and leadership as a science.<sup>2</sup> Police agency leaders who use such tactics may do so out of the belief that it is

necessary to maintain control of officers during emergencies.

## PERSONAL QUALITIES

Most law enforcement executives do not address crises every day. Instead, they primarily focus on their interactions with others. With their schedules revolving around meetings, projects, and committees, successful leaders recognize the importance of quality interpersonal skills. They realize that they operate in an environment in which they must influence even those beyond the scope of their authority, such as peers, superiors, and people outside the agency.<sup>3</sup> To help create, forge, and maintain necessary relationships, they use their personal qualities, which include charisma, expertise, and knowledge.

Employees identify with and admire charismatic leaders who use their personality, excitement, and motivation to influence staff members. Many people lacking other leadership qualities can lead successfully because they have strong charisma.

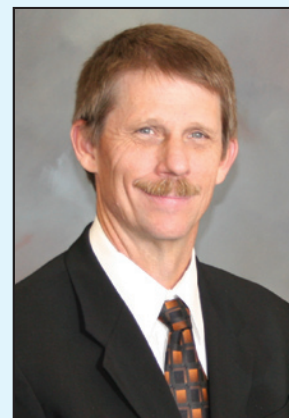
Expertise refers to leaders' mastery of a specific topic or skill. It includes their ability not only to perform the task themselves but also to facilitate others' work in that area.<sup>4</sup> People respect such leaders and find them credible.

Leaders obtain some knowledge because of their position, but they also gain a lot of it by seeking it out. And, they can influence the organization effectively by sharing that knowledge with others. Staff members prefer to be led that way.<sup>5</sup> One

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*Dr. Patterson is the commander of the Santa Barbara County, California, Sheriff's Department's Criminal Investigations Division.*

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of employees' main complaints is the lack of communication between ranks and divisions. People must communicate and share information for successful interactions.<sup>6</sup>

### Leadership as an Art

Effective leaders who use their personal strengths to influence others and achieve outcomes remain consistent, even when they move from one assignment to another. Personnel follow and respond to them. While many employees attempt excellence at work by nature, most excel because the organization's leaders create a favorable environment, which includes quality interactions with peers, subordinates, and superiors.

Getting things done depends on relationships, which leaders enhance by exercising their personal influence factors.<sup>7</sup> Today, many officers do not perform particular duties merely because someone tells them to—they want reasons for tasks or why certain policies and procedures exist. In short, they want communication and interaction with their superiors.

Leaders who use their own personal qualities to influence employees tend to view the organization as a living organism and an open, fluid system that, unlike a machine, changes, grows, and adapts. They see leadership as an art that they

must practice, hone, and modify to maintain their effectiveness.<sup>8</sup> When viewed this way, leadership is based not on a place in the organization but on an interactive process of honest, clear communication. Such a leadership style results in increased employee motivation, productivity, and job satisfaction.<sup>9</sup>

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Practicing an art is a process. Effective leaders take the time and effort necessary to build relationships with their subordinates, peers, and superiors. Each interaction promotes, maintains, or inhibits a leader's effectiveness. While the end goal may be known, the actual path is subject to influence. Successful leaders modify their leadership style based on these relationships. This is one of the characteristics of leaders who constantly practice the art of leadership—making decisions, adjusting, improving, listening, learning, and going forward.

### Practical Approach

The author offers a practical model for leaders striving to successfully motivate their employees. It can be summarized by the acronym RACURP, which stands for rationality, acceptance, communication, understanding, reliability, and persuasion.<sup>10</sup>

- **Rationality:** Leaders should try to balance emotions and objectivity. While too little emotion impairs motivation and creativity, too much clouds judgment. Officers have physically survived based on concrete information. After spending most of their careers insulating themselves from their feelings, they do not want to hear emotional arguments or rationale. Leaders should concentrate on presenting facts.
- **Acceptance:** Law enforcement personnel tend to view disagreements as win-lose situations. And, barriers in relationships can occur in these instances. However, disagreements can be healthy; a diversity of opinions creates synergism. Successful leaders welcome differing viewpoints and input from others. Doing so allows conversation about and exploration of the topic. Otherwise, people do not know what they do not

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know. Honest disagreement usually results in better products and decisions.

- *Communication:* Leaders have a vested interest in maintaining working relationships with everyone they encounter. Communication makes this possible. To this end, successful leaders understand the importance of actively listening to others. While most people listen only briefly before they start formulating a response, leaders should put the effort and energy into truly understanding what their staff members say. And, they must take the time to craft their own message and make it clear.
- *Understanding:* Effective leaders seek to understand situations, as well as the opinions and positions of others. This allows them to resolve problems better. When interacting, they assume a need to learn more and delay making decisions until they grasp available and relevant information. Leaders realize that without concrete data about a situation, their minds will fill in the missing information based on, perhaps, inaccurate or limited perceptions, leading to faulty conclusions. By striving to understand, leaders

can grasp and explain behavior or positions that may not make sense at first. Conversely, jumping to conclusions can hinder the opportunity to explore solutions successfully. Proper communication alleviates misunderstanding.

- *Reliability:* Successful leaders are reliable and consistent. They do not base their decisions and responses to situations on their feelings but on who they are and what they believe in. They



only do things that better their interpersonal relationships and the organization, whether or not others reciprocate. Consistency breeds trust. For example, leaders who truly have an open-door policy will stop and listen to someone who walks into their office; if they simply do not have time, they should explain why and meet with that

person as soon as possible. One instance of not having time for an employee could ruin a leader's reputation for reliability. A single inconsistency can negatively impact communication and impair a leader's flow of accurate and timely information. To maintain trust, leaders must provide support and encouragement and show true interest at all times.

- *Persuasion:* As a true act of leadership, persuasive leaders will use their personal influence, not coercive means, to help motivate employees. While honestly persuading others, truly effective leaders will try to minimize their use of positional power. High-performing leaders stand their ground on principle and let their personal strengths influence personnel.

## CONCLUSION

Successful leaders help others around them succeed and see forward progress and completed projects. They empower others and get them committed to the goals and mission of the organization. Effective leaders help develop their employees, encouraging and enabling them to grow both professionally and personally. The success of these leaders stems from their personal qualities and



support of others' endeavors toward the accomplishment of the organization's mission and goals. Truly successful leaders get things done through the artful application of personal influence. ♦

#### Endnotes

<sup>1</sup> James Kouzes and Barry Posner, *Leadership Challenge* (San Francisco, CA: Jossey-Bass, 2003).

<sup>2</sup> Terry Mangan, personal conversation with author, FBI Academy, Executive Leadership Course, November 2004.

<sup>3</sup> Daniel Katz and Robert Kahn, *The Social Psychology of Organizations* (New York, NY: John Wiley and Sons, 1966).

<sup>4</sup> John French and Bertram Raven, "The Bases of Social Power," in *Studies in Social Power*, ed. Dorwin Cartwright (Ann Arbor, MI: Institute for Social Research, The University of Michigan, 1959).

<sup>5</sup> Donald Patterson, "Power in Law Enforcement: Subordinate Preference and Actual Use of Power in Special Weapons Teams (SWT)" (PhD diss., The Fielding Institute, Santa Barbara, CA, 1990).

<sup>6</sup> Kerry Patterson, Joseph Grenny, Ron McMillan, and Al Switzler, *Crucial Conversations* (Highstown, NJ: McGraw-Hill, 2002).

<sup>7</sup> Robin Sharma, *The Greatest Guide* (New York, NY: Harper Collins, 2006).

<sup>8</sup> Terry Mangan, personal conversation with author, FBI Academy, Executive Leadership Course, November 2004.

<sup>9</sup> Philip Podsakoff and Chester Schriesheim, "Field Studies of French and Raven's Bases of Power: Critique, Reanalysis, and Suggestions for Future Research," *Psychological Bulletin* 97, no. 3 (1985).

<sup>10</sup> The author developed the acronym RACURP as a summary of the main interaction and conflict resolution strategies presented in a series of books that include Roger Fisher, Bruce Patton, and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (New York, NY: Houghton Mifflin, 1991); Roger Fisher and Scott Brown, *Getting Together: Building Relationships As We Negotiate* (New York, NY: Penguin Group, 1989); and Roger Fisher, Elizabeth Kopelman, and Andrea Schneider, *Beyond Machiavelli: Tools for Coping with Conflict* (New York, NY: Penguin Group, 1996).

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## Bulletin Honors

### Michigan State Police

The Michigan State Police presents its Fallen Trooper Memorial. Dedicated on October 16, 2001, and located on the grounds of the agency's training academy in Lansing, it honors Michigan State Police members who have fallen in the line of duty since the department's inception in 1917. The memorial serves as a lasting tribute to the memories of those who made the ultimate sacrifice in service to their state. It is a place of honor, reverence, dignity, and solitude where the families and comrades of these brave heroes can find comfort in remembering their loved ones. The centerpiece of the memorial is a granite wall arranged in a semicircle with the inscription, "This Memorial is dedicated to all the members of the Michigan State Police who have died in the line of duty." Similar to the National Law Enforcement Officers Memorial in Washington, D.C., the names of the fallen are engraved around the slanting face of the wall. The word *trooper* uniquely identifies the memorial with the Michigan State Police. Because all personnel of the department are troopers at heart, the memorial honors all agency members who died in the line of duty, regardless of rank or civilian status.





## Notable Speech



### Why We Give Awards

By Todd Wuestewald, M.P.A., M.S.

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**G**ood evening. As we prepare to honor our peers for their achievements and excellence during our 22nd annual awards banquet, it may be appropriate to ask ourselves why we take time to do this at all. Why do we give awards? Questions about the nature, process, and intent of awards can be troubling at times. Perhaps, it is our competitive spirit as Americans, but there is a tendency to view formal award ceremonies as a win-lose situation—someone wins this honor while someone else loses. There are difficult questions regarding whether an individual or an entire group should be honored. Then, there is the process always open to questioning—was recognition bestowed or denied because of some bias? These issues swirl around recognition programs in any area of human endeavor.

I think it is important to appreciate the complexity of award procedures. One particular case came before our leadership team for consideration. In October 2007, an armed individual forced his way into a residence and shot a woman and the responding officer. He then took two people hostage and held them for several hours. As the situation became critical, our tactical unit mounted

a rescue operation. They carried it out with skill and incredible bravery in the face of direct gunfire and were successful. When the smoke cleared, the hostages were safe, and the shooter was in custody. In this single incident, I saw efficiency, discipline,

*Chief Wuestewald heads the Broken Arrow, Oklahoma, Police Department. He delivered this speech to the 22nd Annual Broken Arrow Police Awards Banquet on March 8, 2008.*



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teamwork, calm deportment, and courage as I have never before witnessed.

As I began to evaluate who should be recognized for this moment of triumph, I suddenly realized that I could not differentiate between the person who answered the frantic 911 report of an active gunman and the technical investigator to finally leave the scene 3 days later. I could not separate the tactical operators on the entry team from the negotiators who kept the suspect distracted, the patrol people who evacuated innocents and maintained the perimeter, the dispatcher who stayed on the phone for hours with a frightened young girl trapped in the house, the logistical people who supported the whole operation, and so on.

Doling out individual awards under such circumstances seems futile. To paraphrase Admiral Chester Nimitz speaking of another time and place, “Uncommon valor was a common virtue.” In the end, a single leadership coin was issued to the entire department with the following inscription:

Presented to the men and women of the Broken Arrow Police Department for their actions on October 1, 2007. Their heroism, professionalism, and teamwork in the face of an active shooter preserved human life and exemplify the highest traditions of the law enforcement profession.

As our leadership team began to consider the formal awards that are the subject of our gathering tonight, they came upon the same dilemma regarding this particular situation, as well as all other accomplishments of the year. How do you recognize individuals for a team effort? How do you separate the valor of one from the valor of those who stood by him? How do you distinguish between extraordinary achievement and the excellence we

see everyday? How do you give proper justice to all who deserve it?

This task is particularly difficult within our agency because of our team approach to almost everything we do; we work out problems in a collaborative way. We rely on the energy and input of everyone to make this a winning team, whether in pursuit of our daily mission or resolution of a crisis. In our department, everyone matters; everyone is involved; and everyone deserves credit.

I observed the leadership team struggle with these questions as they tried to compare concrete acts against vague concepts, such as valor, service, and above and beyond. I watched as they tried to separate individual acts from team efforts. None of this was easy, but they embarked upon their task together and reached consensus according to our process and values. Tonight,

you will see the results of their deliberations. You may not agree with all of their decisions, but I hope you will appreciate the difficulty of their charge.

I believe in awards. To those who scorn award ceremonies, I would say that the process is fallible but not meaningless. If we do not take a moment to try to benchmark our successes, how will we know if we are on course for the future?

Why do we give awards? Certainly, we intend to express appreciation and recognition for the recipients. But awards, in truth, are for the rest of us—we are honoring ideals, not individuals. Understanding that ideals are perfect and somewhat untouchable, we find value not in their attainment but, rather, in the effort. Ideals give us purpose and meaning. They give us direction. They lift us up. These awards remind us that for a brief moment, one person or several did something that elevated us all. ♦

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# Protecting Children Speech That Crosses the Line

By CRAIG KING, J.D.

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**H**igh School Musical, Camp Rock, and “iCarly” are the daily topics in a chat room frequented by tweens and teens, trolled by pedophiles,<sup>1</sup> and patrolled by undercover police officers. In an exchange between an undercover police officer posing as a 14-year-old girl and a 43-year-old male suspect pretending to be a 14-year-old girl, the latter asks,

“Do u have nude pics of yourself?”

“Nooo! U?”

“I’m sending u mine – u send me urs k?”

This scenario is an example of speech in the cyberspace, where fingers on a keyboard serve as substitutes for the spoken word. Do the words and the actions taken to transmit them constitute pandering<sup>2</sup> or any

other type of criminal conduct? The government has an interest in protecting children from exploitation and can criminalize activities related to child pornography, but can speech be included within this government net?

In *United States v Williams*,<sup>3</sup> the U.S. Supreme Court addressed the balance of liberty and security in the context of speech about child pornography.



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This case involved a constitutional challenge to the federal statute Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT),<sup>4</sup> which sought to criminalize the exploitation of children by focusing on speech. The Supreme Court's decision impacts how offenders can be criminally charged. This article explores the evolution of child pornography law, examines *United States v. Williams*, and then discusses the potential for charging panders under the PROTECT act.

## Background

The recent explosion of child pornography is a reprehensible side effect of a society that values free speech and uncensored expression. The Internet, the 21st century equivalent to the 18th century soapbox on the village green, also provides those with evil intent a convenient, anonymous vehicle to exploit children. That exploitation has reached nearly epidemic levels. In 1998, police cracked the "Wonderland Club," an Internet child pornography ring that involved members across 12 countries and whose chairman was an American, uncovering some 750,000 images of children. Membership rules required each member to possess at least 10,000 images of preteen children and to agree to exchange them with other

members. Other rings promote the worst imaginable forms of child pornography, such as custom child pornography (images of child rape created for the consumer) and real-time child pornography, where members may watch the online rape of children as it occurs. In early 2006, federal authorities shut down an Internet Web site called "Kiddypics & Kid-dyvids" that streamed video of

***The recent explosion of child pornography is a reprehensible side effect of a society that values free speech and uncensored expression.***

live child molestations involving children as young as 18 months. Total federal prosecutions of child pornography cases increased more than 452 percent from 1997 to 2004.<sup>5</sup>

In just the last quarter of a century, Congress and the courts have expended a great deal of effort legislating and ruling on child pornography. The history of child pornography jurisprudence has demonstrated that the societal interest in protecting children

from sexual exploitation trumps the free speech considerations associated with obscenity where adults are the subject matter.<sup>6</sup> The harm-to-children rationale has been the foundation of child pornography law, but does it apply to *merely* talking about child pornography?

Child pornography law started with the Supreme Court looking at the issue of obscenity. In 1973, the Supreme Court produced the three-prong *Miller* test as a means of determining whether something was obscene.<sup>7</sup> Using this *Miller* standard, the Supreme Court later determined that while people could possess obscene materials in the privacy of their homes, the government still could regulate distribution and receipt based on interstate commerce grounds.<sup>8</sup> In 1977, Congress passed the Protection of Children Against Sexual Exploitation Act of 1977, which, using the *Miller* standard, prohibited the use of children in the production of obscene material and criminalized the knowing distribution of such materials for commercial purposes.<sup>9</sup>

The first child pornography case came before the Supreme Court in 1982 in *New York v. Ferber*.<sup>10</sup> In *Ferber*, the Supreme Court unanimously rejected the *Miller* test as applied to child pornography and found that the harm done to children by the production, distribution,

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and possession of child pornography far outweighed the free speech exceptions of the *Miller* test.<sup>11</sup> Armed with *Ferber*, Congress took the regulation of child pornography a step further with the Child Protection Act of 1984 and even further with the Child Sexual Abuse and Pornography Act of 1986. These acts broadened the definition of child pornography to include sexually suggestive and criminalized commercial advertisements and solicitations.<sup>12</sup>

With advances to technology and the ever-increasing role of computers to traffic in child pornography, the law needed to adapt accordingly. Congress passed the Child Protection and Obscenity Enforcement Act of 1988, making it illegal to use computers to transport, distribute, or receive child pornography.<sup>13</sup> The crime of possession of child pornography was validated by the Supreme Court in 1990 in the case of *Osborne v. Ohio*.<sup>14</sup> In this case, the Court distinguished possession of child pornography from the possession of First Amendment-protected adult obscene material.

In the Child Pornography Protection Act of 1996 (CPPA), Congress extended the government's reach. The CPPA was designed to deal with the difficulty prosecutors were facing with virtual child pornography,<sup>15</sup> material that purports

to be child pornography but is either adults posing as children or, in some cases, computer generated.<sup>16</sup> The CPPA criminalized "any visual depiction [that] is, or appears to be, of a minor engaging in sexually explicit conduct." Additionally, the CPPA made criminal the possession and distribution of material that had been pandered as child pornography, regardless

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of whether it actually depicted a child.<sup>17</sup> Thus, a person could face prosecution for possessing unobjectionable material that someone else had pandered.<sup>18</sup>

The Supreme Court held these two provisions of the CPPA unconstitutional in *Ashcroft v. Free Speech Coalition*.<sup>19</sup> The virtual provision, the Court reasoned, did not really protect children; thus, it ran afoul of the First Amendment. The Court found the provision to be overbroad. One of the ramifications

of *Free Speech Coalition* was it made prosecutions even more difficult with defendants claiming the images were not real and forcing prosecutors to prove beyond a reasonable doubt that the subjects in the images were, in fact, minors. In the context of the World Wide Web, that task took on global proportions.<sup>20</sup>

### **The PROTECT Act and *United States v. Williams***

PROTECT was passed in an effort to cure the deficiencies contained in the CPPA's pandering provision identified by the Court in *Free Speech Coalition*.<sup>21</sup> With the PROTECT Act, Congress changed tactics and tailored the statute to criminalize the act of pandering without regard to the actual nature of the material pandered.<sup>22</sup> In *United States v. Williams*, the Supreme Court addressed the extent to which this tactic worked.<sup>23</sup>

On April 26, 2004, respondent Michael Williams, using a sexually explicit screen name, signed in to a public Internet chat room. A U.S. Secret Service agent also had signed in to the chat room under the moniker "Lisa n Miami." The agent noticed that Williams had posted a message that read "Dad of toddler has 'good' pics of her an [sic] me for swap of your toddler pics, or live cam." The agent struck up a conversation with Williams, leading to an electronic

exchange of nonpornographic pictures of children. The agent's picture was, in fact, a doctored photograph of an adult. Soon thereafter, Williams messaged that he had photographs of men molesting his 4-year-old daughter. Suspicious that "Lisa n Miami" was a law enforcement agent, Williams demanded that the agent produce additional pictures. When the agent did not, Williams posted the following public message in the chat room: "HERE ROOM; I CAN PUT UPLINK CUZ IM FOR REAL—SHE CANT." Appended to this declaration was a hyperlink that, when clicked, led to seven pictures of actual children, ages approximately 5 to 15, engaging in sexually explicit conduct and displaying their genitals.<sup>24</sup>

The U.S. Secret Service then obtained a search warrant for Williams' home, where agents seized two hard drives containing at least 22 images of real children engaged in sexually explicit conduct, some of it sadomasochistic. Williams was charged with one count of pandering child pornography<sup>25</sup> and one count of possessing child pornography<sup>26</sup> pursuant to the statute. He pleaded guilty to both counts but reserved the right to challenge the constitutionality of the pandering conviction. The district court rejected his challenge and sentenced him to concurrent

60-month sentences on the two counts.<sup>27</sup> The U.S. Court of Appeals for the Eleventh Circuit reversed the pandering conviction, holding that the statute was both overbroad and impermissibly vague.<sup>28</sup> The Supreme Court agreed to hear the case.<sup>29</sup>

Williams asserted that because his pandering conviction was based on his offer to provide child pornography to the U.S. Secret Service agent and, thus, was tied to conduct that was essentially just speech, Williams challenged the conviction on First Amendment grounds. Specifically, he alleged that the PROTECT Act was overbroad, meaning it prohibits a substantial amount of protected speech.<sup>30</sup> In writing for the Supreme Court, Justice Scalia described the issue, "On the one hand, the threat of enforcement

of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas.<sup>31</sup> On the other hand, invalidating a law that in some of its applications is perfectly constitutional—particularly a law directed at conduct so antisocial that it has been made criminal—has obvious harmful effects."<sup>32</sup>

To determine whether the statute intruded too far into protected First Amendment activity and, thus, is overbroad, the Court analyzed precisely what the statute covers. Generally speaking, the pandering provision<sup>33</sup> prohibits offers to provide and requests to obtain child pornography.<sup>34</sup> The statute does not require the actual existence of child pornography. In this respect, it differs from the



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statutes in *Ferber*, *Osborne*, and *Free Speech Coalition*, which prohibited the possession or distribution of child pornography.<sup>35</sup> Rather than targeting the underlying material, this statute criminalizes the speech that introduces such material into the child-pornography distribution network.<sup>36</sup>

Thus, an Internet user who solicits child pornography from an undercover agent violates the statute, even if the officer possesses no child pornography. Likewise, a person who advertises virtual child pornography as depicting actual children also falls within the reach of the statute.<sup>37</sup> The statute's definition of the material or purported material that may not be pandered or solicited is obscene material depicting (actual or virtual) children engaged in sexually explicit conduct and any other material depicting actual children engaged in sexually explicit conduct.<sup>38</sup> This definition is consistent with material targeted in previous statutes upheld by the Court.<sup>39</sup>

In upholding the constitutionality of the pandering provision contained in PROTECT, the Court carefully dissected its language. The Court first noted that the crime of pandering has an intent requirement, specifically "knowingly."<sup>40</sup> The Court then explored the choice of verbs used to describe the actions that constitute the

criminal conduct—"advertises, promotes, presents, distributes, or solicits"—concluding that they clearly have a transactional meaning. The statute penalizes speech that accompanies or seeks to induce a transfer of child pornography—via reproduction or physical delivery—from one person to another. Justice Scalia, in writing for the Court, stated, "Three of the verbs, advertising, distributing, and soliciting, are steps taken in the course of an actual or proposed transfer of a product, typically, but not exclusively, in a commercial market."<sup>41</sup>

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Justice Scalia further commented that the two remaining verbs—promotes and presents—must have commonsense meaning determined by their context. Promotes, in a list that includes solicits, distributes, and advertises, is most sensibly read to mean the act of recommending purported child

pornography to another person for his acquisition.<sup>42</sup> Similarly, presents, in the context of the other verbs with which it is associated, means showing or offering the child pornography to another person with a view to his acquisition.<sup>43</sup> Justice Scalia clarified that the transactions covered by the statute need not be commercial, stating

One could certainly “distribute” child pornography without expecting payment in return. Indeed, in much Internet file sharing of child pornography each participant makes his files available for free to other participants.<sup>44</sup>

According to the Court, “Distribution may involve sophisticated pedophile rings or organized crime groups that operate for profit but, in many cases, is carried out by individual amateurs who seek no financial reward.”<sup>45</sup> “It would be an odd constitutional principle,” Justice Scalia observed, “that permitted the government to prohibit offers to sell illegal drugs, but not offers to give them away for free.” To run afoul of the statute, the speech need only accompany or seek to induce the transfer of child pornography from one person to another.<sup>46</sup>

Of critical importance to the statute's constitutionality are phrases designed to capture the defendant's belief regarding

the material or what the defendant intends to cause another to believe. Specifically, the statute prohibits pandering any material “in a manner that reflects the belief” or “in a manner...that is intended to cause another to believe.” These phrases require proof that the defendant subjectively believed that the materials he was either soliciting or purveying constituted materials that are either obscene or involve real children (i.e., materials that are not protected by the First Amendment).

The Supreme Court upheld the constitutionality of PROTECT, concluding that the statute only prohibits solicitations or offers relating to materials that the defendant believes, and intends others to believe, are materials Congress could constitutionally prohibit anyone from possessing. The fact that the defendant might sometimes be mistaken and that the materials might actually be constitutionally protected does not matter. “Offers to engage in illegal transactions are categorically excluded from First Amendment protection.”<sup>47</sup>

The Court also emphasized that as applied to materials that do not involve real children, the statute applies only to “sexually explicit conduct,” which, the Court made clear, does not reach instances where “sexual intercourse...is merely suggested.” This leaves out sex scenes

in R-rated movies where sex is simulated but, instead, applies where the “portrayal must cause a reasonable viewer to believe that the actors actually engaged in that conduct on camera.”<sup>48</sup>

## Conclusion

In the opening scenario between an undercover police officer posing as a 14-year-old girl and a 43-year-old male suspect pretending to be another 14-year-old girl, where has the crime of pandering occurred? Using *Williams* as our guide,



the solicitation for the nude pictures of a 14-year-old would fit the definition of pandering under the PROTECT act. In his first entry, the suspect has clearly solicited material that fits the PROTECT definition of obscene material and, thereby, has pandered. In the last entry, he also offers to transmit what

is intended to cause the undercover officer to believe is obscene material and then solicits again, pandering twice. So in this brief, three-line dialogue, the suspect has pandered three times.

Officers would be wise to seek prosecutorial guidance regarding entrapment issues and, as is normal procedure in these types of undercover operations, avoid quid pro quo exchanges with subjects online. The PROTECT Act and the *Williams* case now provide law enforcement with a powerful weapon in the fight to protect against child exploitation. ♦

## Endnotes

<sup>1</sup> See Merriam-Webster Online, s.v. “Pedophile,” <http://www.m-w.com> (accessed December 23, 2008). (One afflicted with pedophilia; a sexual perversion where children are the preferred sexual object.)

<sup>2</sup> Pandering is defined as the catering to or exploitation of the weaknesses of others, especially “to provide gratification for others’ desires.” See Merriam-Webster Online, s.v. “Pandering,” <http://www.m-w.com> (accessed December 23, 2008). As a legal concept, pandering is most commonly associated with prostitution. In that context, pandering provisions are statutes penalizing various acts by intermediaries who engage in the commercial exploitation of prostitution and are aimed at those who, as agents, promote prostitution, rather than against the prostitutes themselves. The term *pandering*, in some instances, is applied by Congress and the courts to the promotion of obscenity. See, e.g., 39 U.S.C. § 3008 (prohibiting pandering advertisements of sexually provocative materials by mail), *Ginzburg v. United*

*States*, 383 U.S. 463, 86 S. Ct. 942 (1966) (considering obscene nature of erotically advertised publications). Congress has characterized both the child pornography regulation at issue in this case (18 U.S.C. § 2252A(a)(3)(B)) and its unconstitutional predecessor (18 U.S.C. § 2256(8)(D) (1996)) as pandering provisions.

<sup>3</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>4</sup> Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, (PROTECT) 18 U.S.C. § 2252A(a)(3)(B).

<sup>5</sup> Statement of Laura H. Parsky, deputy asst. attorney general, Criminal Division, before the Comm. on Commerce, Science, and Transportation, U.S. Senate, Concerning Protecting Children on the Internet. January 19, 2006.

<sup>6</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>7</sup> *Miller v. California*, 413 U.S. 15, 23–24 (1973); see also, e.g., *Jenkins v. Georgia*, 418 U.S. 153, 161 (1974).

<sup>8</sup> *Stanley v. Georgia*, 394 U.S. 557, 568 (1969).

<sup>9</sup> Protection of Children Against Sexual Exploitation Act of 1977.

<sup>10</sup> *New York v. Ferber*, 458 U.S. 747, 102 S. Ct. 3348 (1982).

<sup>11</sup> *Id.*

<sup>12</sup> Child Protection Act of 1984.

<sup>13</sup> *United States v. Williams*, 444 F. 3d 1286 (11th Circuit 2006).

<sup>14</sup> *Osborne v. Ohio*, 495 U.S. 103, 109–11 (1990).

<sup>15</sup> Child Pornography Prevention Act of 1996 (CPPA).

<sup>16</sup> *United States v. Williams*, 444 F. 3d 1286 (11th Circuit 2006).

<sup>17</sup> *United States v. Williams*, 444 F. 3d 1286 (11th Circuit 2006). (citing 18 U.S.C. § 2256(8)(D)).

<sup>18</sup> *Id.*

<sup>19</sup> *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S. Ct. 1389 (2002).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>24</sup> *United States v. Williams*, 444 F. 3d 1286 (11th Circuit 2006).

<sup>25</sup> § 2252A(a)(3)(B).

<sup>26</sup> § 2252A(a)(5)(B).

<sup>27</sup> No. 04–20299–CR–MIDDLE-BROOKS (SD Fla., Aug. 20, 2004), App. B to Pet. for Cert. 46a–69a.

<sup>28</sup> 444 F. 3d, at 1308–1309, 1.

<sup>29</sup> 549 U.S. 06–694 petition for writ of certiorari granted.

<sup>30</sup> *Virginia v. Hicks*, 539 U.S. 113, 119–120 (2003).

<sup>31</sup> *United States v. Williams*, 444 F. 3d 1286 (11th Circuit 2006).

<sup>32</sup> See *Board of Trustees of State Univ. of N. Y. v. Fox*, 492 U.S. 469, 485 (1989); *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Invalidation for overbreadth is “strong medicine [that is not to be] casually employed.” *Los Angeles Police Dept. v. United Reporting Publishing Corp.*, 528 U.S. 32, 39 (1999) (quoting *Ferber*, 458 U.S., at 769).

<sup>33</sup> § 2252A(a)(3)(B).

<sup>34</sup> reads as follows:

a) Any person who—  
3) knowingly—....

B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

ii) a visual depiction of an actual minor engaging in sexually explicit conduct,....

shall be punished as provided in subsection (b) § 2252A(a)(3)(B) (2000 ed., Supp. V).

§ 2256(2)(A) defines “sexually explicit conduct” as “actual or simulated—

i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

ii) bestiality;

iii) masturbation;

iv) sadistic or masochistic abuse; or  
v) lascivious exhibition of the genitals or pubic area of any person.” Violation of § 2252A(a)(3)(B) incurs a minimum sentence of 5 years imprisonment and a maximum of 20 years. 18 U.S.C. § 2252A(b)(1).

<sup>35</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See *Free Speech Coalition*, 535 U.S., at 245–246 (stating that the First Amendment does not protect obscenity or pornography produced with actual children); *id.*, at 256 (holding invalid the challenged provision of the CPPA because it “cover[ed] materials beyond the categories recognized in *Ferber* and *Miller*”).

<sup>39</sup> 128 S. Ct. 1839, citing *Ferber* and *Miller*.

<sup>40</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>41</sup> *Id.*

<sup>42</sup> See American Heritage Dictionary 1403 (4th ed. 2000) (def. 4: “To attempt to sell or popularize by advertising or publicity”).

<sup>43</sup> See *id.*, at 1388 (def. 3a: “To make a gift or award of”).

<sup>44</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>45</sup> Child Pornography on the Internet.

<sup>46</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

<sup>47</sup> *Id.*

<sup>48</sup> *United States v. Williams*, 128 S. Ct. 1830 (2008).

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*Assistant General Counsel King is a legal instructor at the FBI Academy.*

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*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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# Technology Update

## **NICS 10-Year Anniversary** *Milestone for FBI's Gun-Buyer Background Check System*

**T**he National Instant Criminal Background Check System (NICS) Section of the FBI's Criminal Justice Information Services Division has completed 10 years of operation. NICS, created as the result of an amendment to the Gun Control Act of 1968, ensures the timely transfer of firearms to eligible gun buyers and prevents the purchase of such weapons by those not qualified.

### **The Brady Act**

Following the serious wounding of White House Press Secretary James S. Brady during the assassination attempt on President Ronald Reagan in March 1981, Mr. Brady's wife, Sarah, joined an effort to place stricter regulations on the transfer of firearms and to develop reasonable gun control laws. As a result, the Brady Handgun Violence Prevention Act of 1993 (Brady Act) became law. The Brady Act requires federal firearms licensees (FFLs) to request background checks on individuals attempting to purchase firearms, both long guns and handguns. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the attorney general to establish NICS so that any FFL could request an immediate determination as to whether the receipt of a firearm by a prospective gun buyer would violate federal or state laws.

### **The Process**

When an FFL requests a NICS check, personnel use the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index databases to conduct a name search for any matching records. Each background check includes an automated search of more than 61 million criminal history records, including those on wanted persons and subjects of protective or restraining orders.

To accomplish a joint mission of ensuring public safety through information sharing, NICS works in partnership with the U.S. Department of Justice; the U.S. Immigration and Customs Enforcement; the Bureau of Alcohol, Tobacco, Firearms and Explosives; point-of-contact states (those coordinating their own state's background checks); and other local, state, and federal law enforcement agencies. During its first 10 years of operation, NICS has processed more than 90 million background checks.

Throughout the past 10 years, advances in technology have improved the availability of information to the examiners who process the background checks, enabling them to provide more accurate, timely, and reliable services to the FFLs and customers they serve. Also, two major endeavors—the growth of the NICS Index and the retrieval of final disposition information for hundreds of thousands of criminal



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history records—have increased the efficiency of the checks.

### **The NICS Index**

The NICS Index maintains information on individuals determined to be federally prohibited from purchasing or possessing firearms. A potential gun buyer's descriptive information, when matched with a NICS Index record, will result in an immediate denial. NICS continues to educate state and federal agencies on the importance of submitting individuals for entry into the NICS Index that currently contains over 5 million records. Shooting incidents, such as the tragedy at Virginia Tech in April 2007, have further motivated agencies to submit information to the NICS Index.

### **The Challenge**

One major challenge NICS personnel encountered when operations began and continue to face is the lack of final disposition information on many criminal history records. For example, NICS may have arrest information for someone who, if convicted of the charges, would be prohibited from purchasing a firearm. Through court documentation, NICS staff members must confirm the person's status. Over the past 10 years, NICS examiners, through persistent and resolute research with courts and law enforcement agencies, have been instrumental in updating more than 650,000 criminal history records with final disposition information.

### **NICS Time Line**

- 1981 James S. Brady severely injured in assassination attempt on President Reagan.
- 1993 President Clinton signs the Brady Act into law.
- 1998 The National Instant Criminal Background Check System (NICS) becomes operational.
- 2001 U.S. Attorney General Ashcroft mandates increase in NICS Immediate Determination Rate. Transfer process begins (personnel begin to process calls resulting in delayed transactions and immediately review them).
- 2002 NICS E-Check via the Internet implemented as an alternative means to conduct background check requests.
- 2003 NICS begins conducting background checks for those purchasing explosives.
- 2004 Record retention for "proceed" transactions decreases to 24 hours.
- 2005 James S. Brady visits the NICS Section at the FBI's Criminal Justice Information Services Division facility in Clarksburg, West Virginia.
- 2008 NICS reaches 10-year milestone.

## Conclusion

Today, the nearly 500 employees of the National Instant Criminal Background Check System remain diligent and dedicated to ensuring the timely transfer of firearms to eligible individuals while, at the same time, denying such action to felons, fugitives, and other people prohibited by state or federal laws. Looking forward, a new NICS modernization initiative is on the horizon that will improve the infrastructure and refresh the technology that drives the system. It also will provide many other benefits, such as more efficient information sharing with law enforcement partners and enhanced customer service to federal firearms licensees. For more information about NICS, access <http://www.fbi.gov/hq/cjisd/nics.htm>. ♦

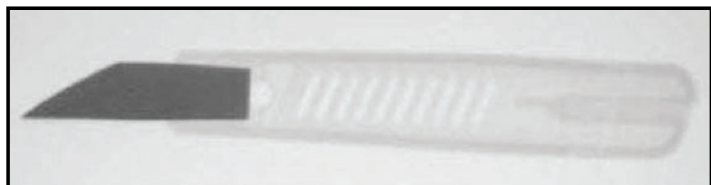
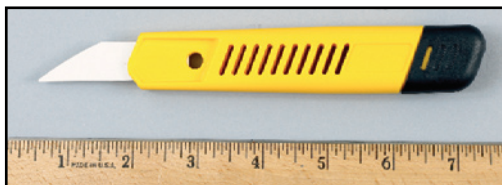


*FBI Deputy Assistant Director Jerome M. Pender, left, speaks to James S. Brady, former press secretary to President Ronald Reagan, during Brady's visit to the CJIS Division's West Virginia facility in 2005.*

## Unusual Weapon

### *Ceramic Blade Knife*

This unusual weapon has a plastic handle with a ceramic blade. Law enforcement officers must be aware that offenders may attempt to use this device that magnetometers cannot detect.





# ***FBI Law Enforcement Bulletin***

## **Author Guidelines**

### **GENERAL INFORMATION**

The *FBI Law Enforcement Bulletin* is an official publication of the Federal Bureau of Investigation and the U.S. Department of Justice.

**Frequency of Publication:** Monthly.

**Purpose:** To provide a forum for the exchange of information on law enforcement-related topics.

**Audience:** Criminal justice professionals, primarily law enforcement managers.

### **MANUSCRIPT SPECIFICATIONS**

**Length:** Feature articles should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced). Submissions for specialized departments, such as Police Practice and Case Study, should contain 1,200 to 2,000 words (5 to 8 pages, double-spaced).

**Format:** Authors should submit three copies of their articles typed and double-spaced on 8 ½-by 11-inch white paper with all pages numbered. When possible, an electronic version of the article saved on computer disk should accompany the typed manuscript.

Authors should supply references when quoting a source exactly, citing or paraphrasing another person's work or ideas, or referring to information that generally is not well known. For proper footnote format, authors should refer to *A Manual for Writers of Term Papers, Theses, and Dissertations*, 6th ed., by Kate L. Turabian.

**Writing Style and Grammar:** The *Bulletin* prefers to publish articles in the third person (Point of View and Perspective submissions are exceptions) using active voice. Authors should follow *The New York Public Library Writer's Guide to Style and Usage* and should study several issues of the magazine to ensure that their writing style meets the *Bulletin's* requirements.

Authors also should contact the *Bulletin* staff for the expanded author guidelines, which contain

additional specifications, detailed examples, and effective writing techniques.

### **PHOTOGRAPHS AND GRAPHICS**

A photograph of the author(s) should accompany the manuscript. Authors can submit photos and illustrations that visually enhance and support the text. Black-and-white glossy prints (3- by 5-inch to 5- by 7-inch) reproduce best. The *Bulletin* does not accept responsibility for lost or damaged photos or illustrations.

### **PUBLICATION**

**Judging Manuscripts:** The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. The *Bulletin* generally does not publish articles on similar topics within a 12-month period or accept articles previously published or currently under consideration by other magazines. Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service.

**Query Letters:** Authors may submit a query letter along with a 1- to 2-page outline before writing an article. Although designed to help authors, this process does not guarantee acceptance of any article.

**Author Notification:** The *Bulletin* staff will review queries and articles and advise the authors of acceptance or rejection. The magazine cannot guarantee a publication date for accepted articles.

**Editing:** The *Bulletin* staff edits all manuscripts for length, clarity, format, and style.

### **SUBMISSION**

Authors should mail their submissions to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135; telephone: 703-632-1952; fax: 703-632-1968; e-mail: [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).



## Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Seeley

While off duty outside his lakefront home, Officer John Seeley of the New York State Park Police heard someone preparing a snowmobile for operation at a boat launch near his property. Fearing the thinness of the ice, Officer Seeley remained attentive to the situation. Moments later, the operator of the vehicle started across the lake and broke through the ice. The snowmobile sank, and the driver struggled to stay afloat in the frigid water. Immediately, Officer Seeley called 911 to report the incident and rushed to assist the individual. He then borrowed a rowboat from a neighbor and pushed it until he reached waist-deep water. Then, he got in and pulled himself across the ice with a claw hammer. Upon reaching the victim, he helped him into the boat. At this point, the rowboat was locked in ice; Officer Seeley waited with the individual until additional help arrived.



Detective Carney

During an unprecedented rainfall in the area that flooded neighborhoods, rivers, and ponds, Detective Paul Carney of the Elmhurst, Illinois, Police Department was off duty and taking photographs of a park flooded with over 10 feet of water. At that time, he heard people screaming and saw them pointing to a 17-year-old boy trapped in the water. Disregarding his own safety, Detective Carney entered the water, swam to the young man, and struggled to keep the victim, who was weighted down by heavy clothes and work boots, afloat. At that time, a man and his son came to their aid in a raft. Detective Carney held onto the victim and the raft until reaching the shore.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.



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## Patch Call



Madison, New Jersey, as indicated by its police department's patch, is known as the Rose City because of the many immigrants who worked local gardens and supplied roses to New York City florists. As land became more valuable, the gardens were sold off for corporate use, but the city remains proud of its heritage.



The patch of the Ballwin, Missouri, Police Department features depictions of the Harrison-Schmidt-Dahlke Log House, the oldest home in the city; the Barn at Lucerne; and the logo of The Pointe at Ballwin Commons community center. These locations represent the past, present, and future. The oak leaf and sunrays reflect the strength of the community.